

ORIGINAL

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Primarius China Fund LP; Primarius Focus LP;
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Partners Ltd.

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RICHARD W. WIEKING
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NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

EDL

PRIMARIUS CAPITAL LLC;
PRIMARIUS CHINA FUND LP;
PRIMARIUS FOCUS LP; PRIMARIUS
PARTNERS LP and PRIMARIUS
OFFSHORE PARTNERS LTD.,

Plaintiffs,

vs.

JAYHAWK CAPITAL
MANAGEMENT, LLC; JAYHAWK
CHINA FUND (CAYMAN) LTD.;
JAYHAWK INVESTMENTS LP;
JAYHAWK INSTITUTIONAL
PARTNERS LP; KENT C.
MCCARTHY and DOES 1 through 100,
Inclusive,

Defendants.

C 07 1804

Case No.:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs Primarius Capital LLC, Primarius China Fund LP, Primarius Partners
LP, Primarius Focus LP and Primarius Offshore Partners Ltd. allege:

Jurisdiction and Venue

1
2 1. This action arises under §§ 9 and 10(b) of the Securities Exchange Act of
3 1934, as Amended (the “Exchange Act”), 15 U.S.C. §§ 78i and 78j(b) respectively and
4 § 206 of the Investment Advisers Act, 15 U.S.C. § 80b-6(1) as hereinafter more fully
5 appears. This Court therefore has subject matter jurisdiction under 28 U.S.C. § 1331.
6 The Court should assume subject matter jurisdiction of Plaintiffs’ state law claims under
7 the doctrine of pendent jurisdiction because those claims and Plaintiffs’ federal claims
8 arise out of a common nucleus of operative fact.

9 2. The acts and/or transactions that are the subject of this Complaint occurred
10 in the Northern District of California and elsewhere. Moreover, Defendants each
11 transact business and/or are found within this District. Accordingly, this Court has
12 personal jurisdiction over each defendant, and venue is proper under § 27 of the
13 Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1391(a) and (b).

14 3. Additionally, Article XII, paragraph 12.1(o) of the Primarius China Fund
15 Limited Partnership Agreement, which, along with the Primarius China Fund LP
16 Confidential Private Placement Memorandum, determines the rights and duties of
17 Primarius China’s general and limited partners, provides in pertinent part:

18 **THE PARTNERS AND ASSIGNEES HEREBY CONSENT TO THE**
19 **EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE**
20 **OF CALIFORNIA AND THE FEDERAL COURTS OF THE UNITED**
21 **STATES, IN EACH CASE SITTING IN SAN FRANCISCO COUNTY,**
22 **CALIFORNIA, IN ANY PROCEEDING RELATING TO THIS**
23 **AGREEMENT.**

24 **THE PARTNERS AND ASSIGNEES AGREE NOT TO RAISE ANY**
25 **OBJECTION TO VENUE IN THE COURTS OF THE STATE OF**
26 **CALIFORNIA AND THE FEDERAL COURTS OF THE UNITED**
27 **STATES, IN EACH CASE SITTING IN SAN FRANCISCO COUNTY,**
28 **CALIFORNIA, IN ANY PROCEEDING RELATING TO THIS**
AGREEMENT. [Emphasis in original.]

4. Jayhawk China has therefore consented to the personal and subject matter
jurisdiction and venue of this Court with respect to all matters herein relating to the
Primarius China Agreement.

Case Overview

5. Defendant Kent C. McCarthy (“McCarthy”) is the exclusive ruler of an investment empire that includes Defendants Jayhawk Capital Management, LLC (“Jayhawk”), Jayhawk China Fund (Cayman), Ltd. (“Jayhawk China”), Jayhawk Investments, LP (“Jayhawk Investments”) and Jayhawk Institutional Partners, LP (“Jayhawk Institutional”), all hedge funds. According to a submission on hedgefund.net in January 2007, Jayhawk China had approximately \$526 million under management, with total “firm assets,” which included Jayhawk Investments and Jayhawk Institutional, totaling approximately \$602 million. McCarthy treats the Jayhawk entities as his own private vehicles, deploying them as necessary to meet his personal ends.

6. McCarthy has a history of luring smaller funds, like Plaintiffs here, and their managers into association with him by telling them that he is growing weary of the hedge fund business and is essentially looking for a successor. After the smaller funds have allied themselves with McCarthy, accepted often token investments from him and/or his funds, accepted McCarthy as an investment advisor and given him one-way, *i.e.*, non-reciprocal, complete access in real-time or near real-time to their positions and trading activities (“transparency”) and also a cut of their earnings, he proceeds to use them shamelessly to advance his own financial goals, without regard for their well-being and to their great detriment.

7. As explained in greater detail below, that is what happened here. In or around January 2003, McCarthy approached Patrick Lin (“Lin”), managing member and portfolio manager of Plaintiff Primarius Capital LLC (“Primarius”), and told Lin the story described in the preceding paragraph. McCarthy transferred control of one of his smaller funds, Lucky Henry, to Primarius, whereupon it was renamed Primarius Focus LP (“Focus”) (a Plaintiff here) and also invested through the Jayhawk entities in Plaintiffs Primarius China Fund LP (“Primarius China”), Primarius Partners LP (“Partners”) and Focus. Defendants were granted complete one-way transparency in Primarius China, Partners and Focus (as explained below, Defendants’ transparency into

Partners and Focus was subsequently limited) and McCarthy became an investment advisor to Primarius China, Partners and Focus.

8. Between 2003 and 2006, Defendants breached their fiduciary duties to Plaintiffs by, *inter alia*, deliberately providing misleading and fraudulent investment advice, committed front-running against Plaintiffs, violated provisions of the securities statutes, including without limitation Rule 10b-5 and committed common law fraud against Plaintiffs, all as described below.

The Parties

9. Plaintiff Primarius Capital LLC (“Primarius”) is a Delaware limited liability company with its principal place of business at One Montgomery Street, San Francisco, California. Primarius is in the business of managing private investment funds, including Plaintiffs Primarius China Fund LP, Primarius Partners LP, Primarius Focus LP and Primarius Offshore Partners Ltd.

10. Plaintiff Primarius China Fund LP (“Primarius China”) is a Delaware limited partnership with its principal place of business at One Montgomery Street, San Francisco, California. Primarius China is “hedge fund” that was in the business of investing on behalf of its limited partners primarily in publicly-traded US, China-related, Hong Kong and Taiwan securities. Primarius China was dissolved as of September 29, 2006, largely as a result of the wrongdoing described herein, and is currently in the process of winding up its operations. Primarius is the sole general partner of Primarius China.

11. Plaintiff Primarius Focus LP (“Focus”) is a Delaware limited partnership with its principal place of business at One Montgomery Street, San Francisco, California. Focus is a “hedge fund” in the business of investing on behalf of its limited partners in a broad range of securities and other instruments including without limitation options, preferred stock, debt instruments, cash equivalents and privately-placed securities of public and private companies.

12. Plaintiff Primarius Partners LP (“Partners”) is a Delaware limited

1 partnership with its principal place of business at One Montgomery Street, San
2 Francisco, California. Partners is a “hedge fund” in the business of investing on behalf
3 of its limited partners in a broad range of securities and other instruments including
4 without limitation options, preferred stock, debt instruments, cash equivalents and
5 privately-placed securities of public and private companies.

6 13. Plaintiff Primarius Offshore Partners Ltd. (“Offshore Partners”) is a British
7 Virgin Islands corporation with its principal place of business at One Montgomery
8 Street, San Francisco, California. Offshore Partners is a “hedge fund” in the business of
9 investing on behalf of its limited partners in a broad range of securities and other
10 instruments including without limitation options, preferred stock, debt instruments, cash
11 equivalents and privately-placed securities of public and private companies..

12 14. Defendant Jayhawk Capital Management, LLC (“Jayhawk”) is a Delaware
13 limited liability company with its principal place of business at 5410 West 61st Place,
14 Mission, Kansas. Plaintiffs are informed and believe, and on that basis allege, that
15 Jayhawk is in the business of managing and serving as investment advisor to private
16 investment funds, including Defendants Jayhawk China Fund (Cayman), Ltd., Jayhawk
17 Investments, LP and Jayhawk Institutional Partners, LP. Jayhawk is a member of
18 Primarius and a limited partner of Partners. Defendant Kent McCarthy is the manager
19 and sole member of Jayhawk.

20 15. Plaintiffs are informed and believe, and on that basis allege, that Defendant
21 Jayhawk China Fund (Cayman), Ltd. (“Jayhawk China”) is a Cayman Islands corporation
22 with its principal place of business at 5410 West 61st Place, Mission, Kansas. Jayhawk
23 China is in the business of investing in Chinese securities listed in Hong Kong, the US
24 and China and Jayhawk is the sole general partner and investment manager of Jayhawk
25 China. Jayhawk China was founded in 1995 and was federally registered as an
26 investment advisor with the SEC in 2004. According to Jayhawk China promotional
27 materials dated July 2005, Defendant Kent McCarthy is the “President” of Jayhawk
28 China. Jayhawk China is a limited partner of Primarius China.

1 16. Plaintiffs are informed and believe, and on that basis allege, that Defendant
2 Jayhawk Investments, LP (“Jayhawk Investments”) is a Delaware limited partnership
3 with its principal place of business at 5410 West 61st Place, Mission, Kansas. Plaintiffs
4 are informed and believe, and on that basis allege, that Jayhawk Investments is in the
5 business of investing in various securities and other interests on behalf of its limited
6 partners and that Jayhawk is the sole general partner and investment manager of Jayhawk
7 Investments. Jayhawk Investments is a member of Primarius and a limited partner of
8 Partners and Focus.

9 17. Plaintiffs are informed and believe, and on that basis allege, that Defendant
10 Jayhawk Institutional Partners, LP (“Jayhawk Institutional”) is a Delaware limited
11 partnership with its principal place of business at 5410 West 61st Place, Mission, Kansas.
12 Plaintiffs are informed and believe, and on that basis allege, that Jayhawk Institutional
13 is in the business of investing in various securities and other interests on behalf of its
14 limited partners and that Jayhawk is the sole general partner and investment manager of
15 Jayhawk Institutional.

16 18. Plaintiffs are informed and believe, and on that basis allege, that Kent
17 McCarthy (“McCarthy”) is, and at all relevant times was, a citizen of Kansas residing in
18 Johnson County, Kansas, or a citizen of Nevada residing in Incline Village, Nevada.
19 McCarthy is the principal of Jayhawk, Jayhawk China, Jayhawk Investments and
20 Jayhawk Institutional.

21 19. Plaintiffs are informed and believe and on that basis allege that McCarthy
22 is the alter ego of Jayhawk, Jayhawk China, Jayhawk Investments and Jayhawk
23 Institutional.

24 20. Plaintiffs are ignorant of the true names and capacities of Defendants named
25 herein as Does 1 through 100, inclusive, and therefore sue these Defendants by fictitious
26 names. Plaintiffs will seek leave of court to amend this Complaint to allege their true
27 names and capacities when they are ascertained.
28

The Relevant Agreements and Fee Concessions

21. In or around May 2003, Jayhawk and Primarius entered into a “Management Transfer Agreement” with an effective date of June 1, 2003, a copy of which is appended to this Complaint as Exhibit A, and which is incorporated in its entirety by this reference. The Management Transfer Agreement was the first step in McCarthy’s plan to turn the Primarius funds to his own use.

22. Pursuant to the Management Transfer Agreement, Jayhawk became a member of Primarius, and Jayhawk and Jayhawk Investments collectively obtained the right to receive 10% of certain fees payable by the Primarius funds’ limited partners. In consideration of the payment of these fees, McCarthy was to provide investment advice to Partners and Focus and, as detailed below, the advice he provided was usually deceptive and misleading, with generally catastrophic results.

23. As of September 15, 2003, Primarius, Primarius China, Jayhawk China and Jayhawk entered into a “Fee Sharing Agreement,” a copy of which is appended to this Complaint as Exhibit B, and which is incorporated in its entirety by this reference. Through this agreement, Defendants gained full, one-way transparency into Primarius China (*i.e.*, Primarius China did not receive reciprocal transparency with respect to any Jayhawk entity) and Jayhawk China obtained the right to receive 10% of management fees paid by Primarius China’s limited partners. In exchange, McCarthy was required to provide investment advice and consultation to Primarius and Primarius would be permitted to inform investors and potential investors in Primarius China that Jayhawk China was a significant “shareholder” in Primarius China and that McCarthy and Jayhawk had a participatory role in Primarius China’s investment strategy as a consultant/analyst.

24. Primarius China and Focus typically charged their limited partners a 2% management fee; Partners charged a 1.5% management fee. Primarius China, Focus and Partners also charged their limited partners a 20% incentive fee on all profits realized by such limited partners. Primarius China charged Jayhawk China only a 1% management

1 fee and no incentive fee, Focus charged Defendants no management or incentive fees,
2 and Partners charged Defendants no management fee and only a partial incentive fee.
3 Plaintiffs made these accommodations in consideration of and with the expectation of
4 receiving honest, good faith advice from McCarthy.

5 25. Plaintiffs have paid Defendants approximately \$665,000 to date in profit
6 sharing and have waived approximately \$3.5 million in management and incentive fees
7 for Defendants.

8 **The Jayhawk Entities' Positions in and**
9 **Duties to Primarius China, Partners and Focus**

10 26. As of May 15, 2006, Jayhawk China had two capital accounts in Primarius
11 China with a combined balance of approximately \$32.5 million. The balance of Jayhawk
12 China's accounts had appreciated by approximately \$1.9 million over the preceding four
13 months. As a limited partner of Primarius China, with full "transparency" into that
14 fund's trading and holdings, and by virtue of McCarthy's role as an investment advisor
15 to Primarius China, Jayhawk China was at all relevant times in a fiduciary relationship
16 with Primarius China and owed that fund the full range of applicable fiduciary duties,
17 including the duty not to engage in trades or take other actions harmful to Primarius
18 China. Plaintiffs are informed and believe, and on that basis allege, that a substantial part
19 of the funds invested through Jayhawk China in Primarius China are McCarthy's
20 personal funds.

21 27. As of June 30, 2006, Jayhawk had one capital account in Partners with a
22 balance of \$111,350. As a limited partner of Partners, with full "transparency" into that
23 fund's trading and holdings initially, and later into that fund's "top five" holdings *i.e.*,
24 the five securities in which the value of Partners' holdings were greatest, and by virtue
25 of McCarthy's role as an investment advisor to Partners, Jayhawk was at all relevant
26 times in a fiduciary relationship with Partners and owed that fund the full range of
27 applicable fiduciary duties, including the duty not to engage in trades or take other
28 actions harmful to Partners. Plaintiffs are informed and believe, and on that basis allege,

1 that a substantial part of the funds invested through Jayhawk in Partners are McCarthy's
2 personal funds.

3 28. As of June 30, 2006, Jayhawk Investments had two capital accounts in
4 Partners with a balance of \$1,376,000. As a limited partner of Partners, with full
5 "transparency" into that fund's trading and holdings initially, and later into that fund's
6 "top five" holdings, and by virtue of McCarthy's role as an investment advisor to,
7 Jayhawk was at all relevant times in a fiduciary relationship with Partners and owed that
8 fund the full range of applicable fiduciary duties, including the duty not to engage in
9 trades or take other actions harmful to Partners. Plaintiffs are informed and believe, and
10 on that basis allege, that a substantial part of the funds invested through Jayhawk
11 Investments in Partners are McCarthy's personal funds.

12 29. As of June 30, 2006, Jayhawk had two capital accounts in Focus with a
13 combined balance of \$948,000. As a limited partner of Focus, with full "transparency"
14 into that fund's trading and holdings initially, and later into that fund's "top five"
15 holdings, and by virtue of McCarthy's role as an investment advisor to Focus, Jayhawk
16 was at all relevant times in a fiduciary relationship with Focus and owed that fund the
17 full range of applicable fiduciary duties, including the duty not to engage in trades or
18 take other actions harmful to Focus. Plaintiffs are informed and believe, and on that
19 basis allege, that a substantial part of the funds invested through Jayhawk in Focus are
20 McCarthy's personal funds.

21 30. As of June 30, 2006, Jayhawk Investments had two capital accounts in
22 Focus with a combined balance of \$3,965,000. As a limited partner of Focus, with full
23 "transparency" into that fund's trading and holdings initially, and later into that fund's
24 "top five" holdings, and by virtue of McCarthy's role as an investment advisor to Focus,
25 Jayhawk Investments was at all relevant times in a fiduciary relationship with Focus and
26 owed that fund the full range of applicable fiduciary duties, including the duty not to
27 engage in trades or take other actions harmful to Focus. Plaintiffs are informed and
28 believe, and on that basis allege, that a substantial part of the funds invested through

Jayhawk Investments in Focus are McCarthy's personal funds.

The Jayhawk Entities' "Transparency"
in Primarius China, Partners and Focus

31. As alleged above, under the Fee Sharing Agreement, Jayhawk China and its employees, and hence McCarthy and the other Defendants and their employees, had complete transparency with respect to Primarius China's portfolio and investment activities beginning on or about September 15, 2003. Because of Defendants' abuse of this right, described in detail below, Primarius terminated this transparency on or about May 31, 2006 (and Primarius China's performance subsequently improved markedly).

32. Bank of America was the prime broker for Partners and Focus from their respective inceptions through approximately February 2004, when Goldman Sachs became these funds' prime broker. During the period when Bank of America served as prime broker for Partners and Focus, Defendants and their employees had complete transparency with respect to Partners' and Focus' portfolios and investment activities because Primarius and Defendants shared computer access to this information through Bank of America. When Goldman Sachs became these funds' prime broker, Defendants retained their transparency with respect to each fund's "top five, but no longer had access to information concerning the funds' trading activities.

McCarthy's Role as Advisor to Plaintiffs

33. As alleged above, pursuant to the Fee Sharing Agreement, McCarthy was required to provide investment advice to Primarius China beginning on or about September 15, 2003. McCarthy was, therefore, in a fiduciary relationship with Primarius China at all relevant times and owed that fund the full range of applicable fiduciary duties.

34. As alleged above, in consideration of the 10% of Primarius' "Gross Fees" paid to Jayhawk and Jayhawk Investments pursuant to the Management Transfer Agreement, and the waiver of the standard incentive fee and reduction of the standard management fee, McCarthy was required to provide investment advice to Partners

beginning on or about June 1, 2003. McCarthy was, therefore, in a fiduciary relationship with Partners at all relevant times and owed that fund the full range of applicable fiduciary duties.

35. As alleged above, in consideration of the 10% of Primarius' "Gross Fees" paid to Jayhawk and Jayhawk Investments pursuant to the Management Transfer Agreement, and the waiver of the standard incentive fee and reduction of the standard management fee, McCarthy was required to provide investment advice to Focus beginning on or about June 1, 2003. McCarthy was, therefore, in a fiduciary relationship with Focus at all relevant times and owed that fund the full range of applicable fiduciary duties.

Defendants' Improper Acts

36. Between mid-2005, at the latest, and into 2006, Defendants breached their fiduciary duties to Plaintiffs, committed front-running against Plaintiffs, violated provisions of the securities statutes, including without limitation Rule 10b-5 and committed common law fraud against Plaintiffs, all as described below. The allegations in this section of this Complaint are organized around four particular securities that provide examples of Defendants' misconduct. They do not constitute a full and final inventory of Defendants' wrongdoing. Plaintiffs will amend and augment their allegations as necessary once their investigation is completed.

1. LSB (LXU) - 10b-5, Fraud and Breach of Fiduciary Duty

37. LSB Industries, Inc. ("LSB"), whose common stock is traded as LXU on the American Stock Exchange, is a corporation based in Oklahoma and engaged in the chemical and also air conditioning, heating and climate control businesses.

38. As detailed below, McCarthy, fraudulently, in breach of Defendants' fiduciary duties, and solely to benefit Defendants, advised Plaintiffs to hold their LXU positions when LXU's price was falling, then advised Plaintiffs to sell LXU when its price had bottomed out, all to Plaintiffs' great detriment.

39. At all relevant times, Partners, Focus and Offshore Partners held substantial

positions in LXU.

40. Plaintiffs are informed and believe, and on that basis allege, that, at all relevant times, certain Defendants collectively owned approximately 10% of the outstanding shares of LXU and were hence “insiders” of LSB.

41. Between 2003 and December 2005, McCarthy, acting in his capacity as advisor to Partners and Focus, repeatedly and consistently made favorable statements, orally and in writing, regarding LXU and encouraged Partners and Focus to retain and increase their LXU positions.

42. For example, in an email message to Lin of August 15, 2003, McCarthy stated, “may be somne [sic] good things happening at lsbd,” *i.e.*, at LSB.

43. Partners, Focus and Offshore Partners bought LXU during this period at prices exceeding \$8 per share. By the end of 2004, Plaintiffs collectively held in excess of 400,000 shares of LXU bought on McCarthy’s advice.

44. In an email message to Lin of May 15, 2005, McCarthy wrote, “lxu did a great job on call still think we have a double/triple,” *i.e.*, that the price of LXU was likely to double or triple.

45. In an email message to Lin of August 24, 2005, Mark Fleischhauer (“Fleischhauer”), Jayhawk’s portfolio manager, wrote to Lin:

Did you see JCI buy YRK for \$56.50 per share in cash? Back of the envelope, that is no 10X EBITDA and about 3/4 sales based on deal EV of \$3.2 bn. York’s margins are a fair bit lower than LXU’s in this business and growth prospects probably not quite as strong given LXU’s weighting towards geothermal so LXU may deserve a premium multiple to this. At 10X EBITDA, LXU’s climate control business is worth around \$200 mm (almost the total EV of the company).

46. Between July and November 2005, in a generally rising market, LXU dropped from approximately \$7.30 per share to approximately \$5.00 per share. McCarthy repeatedly advised Partners and Focus to hold their LXU shares.

47. Plaintiffs held their LXU positions and did not sell them during this period solely on the basis of McCarthy’s misleading, deceptive advice, and, as a result, sustained significant losses.

1 48. Plaintiffs are informed and believe, and on that basis allege, that McCarthy
2 advised them to hold their shares of LXU solely to benefit Defendants. LXU is a
3 relatively illiquid security and both Plaintiffs and Defendants held significant positions.
4 Defendants could not sell their LXU because of a “lock-up” provision of the transaction
5 pursuant to which they had been acquired. Had McCarthy properly advised Plaintiffs to
6 sell their LXU holdings, this would have further depressed LXU’s price, to the detriment
7 of Defendants, the value of whose holdings would have declined. In so doing, McCarthy
8 breached his fiduciary duty to Plaintiffs by placing his own interests, and those of
9 Defendants, ahead of Plaintiffs’.

10 49. During the fall of 2005, McCarthy began to change his LSB tune. In an
11 email message to Lin of November 7, 2005, McCarthy wrote, “I like the preferred [stock]
12 much more than the common [*i.e.*, LXU] – I am sick of dealing with these guys,” “these
13 guys” being LSB’s management.

14 50. McCarthy began recommending that Partners and Focus sell a substantial
15 proportion of their LXU positions. In an email message to Lin of December 7, 2005,
16 McCarthy wrote, “if I do not get some resolution this week or next – I will sell some
17 common after my lock up date in late dec.” Lin took this to mean that Defendants
18 intended to sell LXU as soon as possible and as a recommendation, made in McCarthy’s
19 capacity as an investment advisor to Plaintiffs, that Partners and Focus should do the
20 same.

21 51. McCarthy made his recommendation that Partners and Focus should sell
22 LXU with knowledge that he was providing misleading advice and for the purpose of
23 deceiving Partners and Focus and inducing them to rely on that advice and sell LXU.
24 Defendants made the misrepresentation that they intended to sell LXU with knowledge
25 of the falsity of this statement and for the purpose of deceiving Partners, Focus and
26 Offshore Partners and inducing them to rely on that statement and sell LXU.

27 52. Partners, Focus and Offshore Partners reasonably relied on McCarthy’s
28 deceptive, misleading advice and Defendants’ misrepresentation with respect to their

1 intentions and sold a significant portion of their LXU at the end of 2005 at under \$5 per
2 share, realizing a huge loss, expecting Defendants to also sell at or around the same time,
3 based on McCarthy's representations. Partners', Focus' and Offshore Partners' losses
4 were a direct and proximate result of McCarthy's and Defendants' fraud and breaches
5 of fiduciary duty.

6 53. Contrary to McCarthy's representations to Partners and Focus, however,
7 Defendants sold none of their LXU shares. In fact, in the one- to three-month period
8 following Partners', Focus' and Offshore Partners' sales of their LXU shares, Defendants
9 actually increased their LXU positions according to the relevant SEC filings.

10 54. McCarthy appears to have deliberately provided Plaintiffs with deceptive
11 advice, and certainly misrepresented Defendants' intentions with respect to LXU. In
12 essence, McCarthy advised Plaintiffs to **hold** their LXU positions while the prices were
13 falling, and then to **sell** when LXU bottomed out and began to rebound. As already
14 explained, McCarthy's "hold" advice benefitted Defendants by preventing the further
15 erosion of LXU's price, and hence the value of Defendants' positions in LXU, that
16 would have resulted from Plaintiffs liquidating their holdings. McCarthy's "sell" advice
17 when LXU was at or near its nadir also benefitted Defendants by placing more shares
18 into the market at a time when Defendants were buying. As an insider of LSB, McCarthy
19 was no doubt privy to information sufficient to allow him to predict the market trajectory
20 of LXU with far greater accuracy than Plaintiffs, and McCarthy appears to have used that
21 information to benefit Defendants, to the great detriment of Plaintiffs.

22 55. In the approximately twelve-month period following Partners', Focus' and
23 Offshore Partners' sales of LXU, LXU's price increased from approximately \$5 per share
24 to approximately \$14, to the great benefit of Defendants.

25 56. Plaintiffs did not feel comfortable re-acquiring LXU during this period.
26 Defendants' antics with respect to those securities had become obvious, and Defendants
27 were still insiders of LSB and therefore in a position to work more mischief. The stock,
28 in essence, had become radioactive from Plaintiffs' perspective.

1 57. Had McCarthy not recommended that Partners and Focus sell LXU, and had
2 Defendants not misrepresented to Partners and Focus that they should sell LXU,
3 Partners, Focus and Offshore Partners would not have done so. McCarthy's fraudulent
4 advice and Defendants' misrepresentation caused Partners to suffer a loss of
5 approximately \$1,293,000, Focus to suffer a loss of approximately \$1,556,000, and
6 Offshore Partners to suffer a loss of approximately \$620,000, for a total of approximately
7 \$3,469,000, with respect to shares of LXU they would still be holding today but for
8 Defendants' wrongdoing.

9 58. Defendants' wrongdoing with respect to LXU also damaged Plaintiffs by
10 negatively affecting their performance during the relevant period. Absent Defendants'
11 misconduct with respect to LXU alone, the performance of Focus, Partners and Offshore
12 Partners would have been 40-80% better than it actually was. As a result, investors
13 pulled out of the Primarius funds, and prospective investors declined to invest.

14 **2. Linktone (LTON) - Fraud, Fiduciary Breach and Front-Running**

15 59. Linktone Ltd. ("Linktone") is a Chinese company based in Shanghai and
16 engaged in the business of selling wireless, value-added services such as ring tones and
17 weather forecasts for use with mobile telephones. Linktone trades on NASDAQ under
18 the symbol LTON.

19 60. As detailed below, Defendants, in breach of their fiduciary duties, dumped
20 huge numbers of LTON shares on the market without informing Plaintiffs, thereby
21 greatly depressing LTON's trading price and hence the value of Plaintiffs' own LTON
22 positions. To benefit Defendants, McCarthy then fraudulently misrepresented to
23 Plaintiffs that he did not know why LTON's price was falling, when he actually knew
24 full well that Defendants were responsible, causing Plaintiffs to retain their LTON
25 positions, which they would have liquidated had they known the truth. Finally,
26 Defendants committed front-running against Primarius China in connection with a
27 redemption request made to that fund by Jayhawk China.

28 61. Beginning in 2005 and extending through January 2006, Primarius China,

1 Partners, Focus and Offshore Partners held substantial positions in LTON.

2 62. During the same period, Jayhawk China also held a substantial position in
3 LTON. According to the relevant SEC filings, Jayhawk China owned approximately 2
4 million shares of LTON, or roughly 7.8% of Linktone's outstanding shares.

5 63. Throughout 2005, McCarthy, acting as an advisor to Primarius China,
6 Partners and Focus, repeatedly and consistently made favorable statements, orally and
7 in writing, regarding LTON and encouraged Partners and Focus to retain and increase
8 their LTON positions.

9 64. In an email message to Lin of June 16, 2005, McCarthy wrote, "been buying
10 more lton."

11 65. In an email message to Lin of November 12, 2005, McCarthy wrote,
12 "linktone – I feel like they may surprise everybody when they report in a couple of weeks
13 both in sales and earnings, and outlook – stock is very cheap – tomo [another company
14 in the same sector as Linktone] have a big run." McCarthy's reference to tomo's "big
15 run" implied that the same was likely to happen with LTON.

16 66. On or about January 20, 2006, Lin received a voice mail message from the
17 CEO of Linktone. In his message, the CEO told Lin he had spoken with McCarthy and
18 provided McCarthy with certain information concerning the company's performance.

19 67. The next day, Lin spoke with McCarthy on the telephone. McCarthy, who
20 had been "pumping" LTON to Plaintiffs for the past four months and consistently
21 advising them to buy LTON, gave Lin no indication that Defendants intended to sell any
22 of their shares of LTON. At that point, LTON's price was over \$10 per share.

23 68. Over the succeeding several days, LTON's price per share fell from
24 approximately \$10 to approximately \$8.50.

25 69. Lin asked McCarthy, Plaintiffs' investment advisor, why LTON's price was
26 falling. McCarthy responded that he had no idea. This was a blatant misrepresentation.
27 As McCarthy would confess to Lin approximately one week later, and as McCarthy
28 knew full well at the time of Lin's inquiry, LTON's price was falling because

Defendants, which collectively held a substantial proportion of LTON's outstanding shares, had been dumping large numbers of those shares on the market. Plaintiffs reasonably relied on McCarthy's misrepresentation and held their LTON positions, to their great detriment. Had McCarthy informed Lin that Defendants intended to dump their LTON shares or that they were doing so, Plaintiffs would have sold their LTON as well, knowing that Defendants' trading would depress LTON's price. The reason for McCarthy's misrepresentation is obvious – had Plaintiffs known the truth and sold their LTON too, the price Defendants would have been able to obtain for their shares would have been lower. Defendants' dumping of LTON in this fashion without informing Plaintiffs of their intention, or of the trading itself, constituted both fraud and a breach of Defendants' fiduciary duties to Plaintiffs.

70. Soon thereafter, on the morning of February 1, 2006, before the markets opened, LTON released its quarterly performance figures, which were below projections. Consequently, contrary to McCarthy's advice and predictions, LTON's per share price fell an additional 20%, to approximately \$6.75 that week.

71. In an email message to Lin later on February 1, 2006, McCarthy wrote, with respect to LTON, "I am buying," indicating that he was now causing the Defendants to repurchase the LTON shares they had just sold at between \$8.50 and \$10 for the much lower price occasioned by the negative quarterly figures.

72. Defendants performed their "dump and buy" pirouette in total disregard for the substantial harm it predictably did to Plaintiffs.

73. Plaintiffs are informed and believe, and on that basis allege, that Defendants sold LTON, on inside information, believing that Plaintiffs would sell substantial numbers of their LTON shares once the unfavorable quarterly report was released, thereby front-running Plaintiffs. These sales by Defendants in anticipation of sales by Plaintiffs also constituted a breach of Defendants' fiduciary duty not to use their transparency rights to the detriment of Plaintiffs.

74. Defendants also committed front-running against Primarius China and

1 breached their fiduciary duties to that fund with respect to certain LTON trades in
2 connection with certain redemption requests. On May 15, 2006, as described in greater
3 detail below, Jayhawk China requested withdrawal of approximately \$19 million of the
4 approximately \$29 million it had invested in Primarius China.

5 75. Defendants knew that, to pay this redemption, Primarius China would either
6 have to raise cash by liquidating a substantial proportion of its portfolio, including at
7 least a substantial proportion of its position in LTON, transfer to Jayhawk China large
8 numbers of shares of securities held by Primarius China including shares of LTON, or
9 both. Defendants knew the extent of Primarius China's LTON holdings because of the
10 transparency right they had with respect to that fund.

11 76. At or around the time of making the redemption request, and without
12 informing Lin, Primarius or Primarius China, Defendants began dumping huge numbers
13 of shares of LTON on the market for the second time in less than five months. In an
14 email message to Lin of May 18, 2006, McCarthy wrote, with respect to LTON, "I am
15 out." But Defendants clearly wanted Plaintiffs to hold *their* LTON shares; in the same
16 May 18, 2006 email message, McCarthy advised Plaintiffs that "lton will go to 11."
17 Instead of "going to 11," however, because of Defendants' dumping of their LTON
18 shares, LTON's price fell from approximately \$7.50 on May 15, 2006 to approximately
19 \$3.70 on or around August 11, 2006. Having cratered the price of LTON, Jayhawk
20 China then informed Lin that it would be happy to accept shares of that stock as part of
21 the payment of its redemption request in Primarius China, shares Jayhawk China knew
22 Primarius China held because of Defendants' transparency into Primarius China.

23 77. Defendants' reasons for doing this are obvious. Defendants anticipated that
24 Primarius China would have to liquidate substantial numbers of shares of LTON to pay
25 Jayhawk China's redemption request, which liquidation Defendants also knew would
26 depress LTON's market price. By front-running Primarius China and breaching their
27 fiduciary duties to that fund, Defendants were able to sell their LTON shares at a higher
28 price than they would have been able to obtain had they waited for Primarius China to

1 sell. Should Primarius China choose to pay Jayhawk China's redemption in securities
2 rather than cash, Jayhawk China would obviously receive more shares of LTON from
3 Primarius China were Defendants first to depress LTON's price by dumping great
4 quantities of their own LTON shares. They could then also buy back the shares they had
5 dumped at bargain prices. Defendants actions in this regard constituted front-running
6 and a breach of the fiduciary duties they owed to Plaintiffs.

7 78. That Defendants were abusing their transparency right in Primarius China
8 to monitor that fund's trading activities so as to be able to front-run Primarius China is
9 evidenced by an email message of May 15, 2006 to Lin from Fleischhauer stating:

10 I notice that you have not started raising any cash in Primarius China Fund.
11 We have given notice on the redemption and Mike Schmitz [of Jayhawk]
12 has sent the notice to Hedgeworks [Primarius' bookkeeper]. You should
13 have enough time to liquidate names in an orderly manner by the end of
of time.

14 79. Defendants' misconduct with respect to LTON directly and proximately
15 caused Primarius China a loss of approximately \$2,221,000, Partners a loss of
16 approximately \$305,000, Focus a loss of approximately \$919,000 and Offshore Partners
17 a loss of approximately \$191,000, for a total of approximately \$3,331,000.

18 80. Defendants' misconduct with respect to LTON also greatly harmed all four
19 Primarius funds as well as Primarius, by negatively affecting their short-term
20 performance, thereby causing investors to lose confidence in, and divest from, the funds,
21 and potential investors not to make investments they would otherwise have made.
22 Primarius China alone was down by 5.50% in May 2006, 5.67% in June 2006 and
23 10.99% in July 2006 largely because of Defendants' misconduct with respect to LTON,
24 which misconduct cost Primarius China approximately 7% in performance for 2006.
25 Focus', Partners' and Offshore Partners' performance was off for 2006 by approximately
26 3.5%, 2% and 2% respectively as a result of Defendants' wrongdoing with respect to
27 LTON.

28 81. Plaintiffs are currently unable to provide greater detail concerning

Defendants' holdings and trades in LTON because Defendants have failed to make the relevant, required SEC filings since December 2005. This omission is consistent with Defendants' pattern of deceit, fraud and fiduciary breaches with respect to Plaintiffs and hiding their actions from the markets and authorities.

3. Sinovac (SVA) - Market Manipulation, Fiduciary Breach and Front-Running

82. Sinovac Biotech Ltd., also known in China as Beijing Kexing Bioproducts ("Sinovac"), is a Chinese company in the business of manufacturing hepatitis, avian flu and other vaccines. It is traded on the American Stock Exchange under the symbol SVA.

83. As detailed below, Defendants unlawfully manipulated the market for SVA in an attempt to keep SVA's price down for the purpose of pressuring SVA's management into entering into a private investment deal, thereby depressing the value of Plaintiffs' SVA holdings, and/or preventing those holdings from attaining the value they would have but for Defendants' wrongdoing. Defendants then committed front-running against Primarius China in connection with a redemption request made to that fund by Jayhawk China.

84. Plaintiffs introduced Defendants to SVA in or around the fall of 2005.

85. McCarthy viewed Sinovac favorably and encouraged Lin to speak with certain venture capital associates of McCarthy. McCarthy's goal was to assemble a group of venture capital associates and negotiate a private investment in public equity ("PIPE") in Sinovac. In a PIPE, the company offers a block of publicly traded securities to a private investor, typically at a discount from the market price. The PIPE benefits the company by permitting it access to quick cash with reasonable transaction costs. The PIPE benefits the private investor by enabling him to acquire the stock at a lower than market price and to purchase a substantial block of the stock without having to "chase" a market price rising because of his purchases.

86. An email message from Joe Anderson of Abingworth Management, Ltd. to McCarthy of October 10, 2005, which was copied to Lin, states, "it is clear the company

1 [SVA] has to raise money soon to fund the expansion of production facilities. Could be
2 a good PIPE opportunity for Abingworth/Jayhawk?"

3 87. Another email message from Anderson to McCarthy of October 13, 2005
4 evidences the plan to keep SVA's price low, expressing the desire to "control any
5 financing" or "pick up stock in the open market before it runs away." SVA's price on
6 that date was \$6.10.

7 88. In another email message of January 27, 2006, Anderson wrote, "Maybe this
8 could be one for us to look at jointly – possibly a PIPE."

9 89. On January 27, 2006, McCarthy sent an email message to Lin asking if Lin
10 had received Anderson's email message and stating, "he is interested in SVA again."

11 90. From speaking with other SVA shareholders and Sinovac's investor
12 relations officer, Lin determined that Sinovac's management was not interested in the
13 PIPE McCarthy was proposing, and Lin gave this information to McCarthy during this
14 period.

15 91. McCarthy, however, refused to take "no" for an answer. In an email
16 message to Lin of April 5, 2006, he wrote, "Joe had a deal with us Texas Pacific –
17 Kleiner Perkins and Abbingworth to do 25 million – at the last minute First Boston has
18 been saying the co changed its mind and is not going ahead . . . we have no alligience
19 [sic] to First Boston – let's do the deal direct."

20 92. Plaintiffs are informed and believe, and on that basis allege, that throughout
21 this period, Defendants and their allies were knowingly spreading inaccurate rumors
22 within the relevant investment community that SVA was looking to do a PIPE, which
23 rumors were intended to, and did depress the price of SVA. Investors would be less
24 likely to purchase SVA on the open market if they expected that at any moment that
25 market might be flooded with large numbers of new shares issued pursuant to a PIPE.
26 Defendants' purpose in doing this was to induce SVA's management to agree to the PIPE
27 McCarthy desired, and Defendants' actions in this regard were willful.

28 93. Defendants' improper manipulation of the market for SVA during this

1 period obviously harmed Plaintiffs by depressing the value of their holdings of SVA
2 and/or limiting any increase in that value that might have occurred absent McCarthy's
3 wrongdoing.

4 94. In or around early April 2006, McCarthy appears to have finally accepted
5 that Sinovac was not going to deal with him in the short term and caused Jayhawk China
6 to purchase a substantial position in SVA in the open market.

7 95. By early May 2006, SVA had risen to approximately \$5 from approximately
8 \$4. Defendants, however, did not leave SVA alone for long. By mid-May 2006, they
9 were at it again. An email message from Joe Anderson to McCarthy of May 18, 2006
10 states, "They [SVA] dumped Credit Suisse as agent, but if this is a go now, I am sure we
11 could revive interest in a private syndicate with Abingworth, Jayhawk, Kleiner and
12 Texas Pacific (Group)."

13 96. At or around this time, Defendants began dumping large quantities of SVA
14 on the market for two reasons. First, to again depress SVA's price in an effort to
15 pressure the company's management into doing a deal with McCarthy and his allies, and,
16 second, as described below, in connection with Jayhawk China's redemption request to
17 Primarius China.

18 97. On May 15, 2006, as described in greater detail below, Jayhawk China
19 requested withdrawal of approximately \$19 million of the approximately \$29 million it
20 had invested in Primarius China.

21 98. Defendants knew that, to pay this redemption, Primarius China would either
22 have to raise cash by liquidating a substantial proportion of its portfolio, including at
23 least a substantial proportion of its position in SVA, transfer to Jayhawk China large
24 numbers of shares of securities held by Primarius China including shares of SVA, or
25 both. Defendants knew the extent of Primarius China's SVA holdings because of the
26 transparency right they had with respect to that fund.

27 99. At or around the time of making the redemption request, and without
28 informing Lin, Primarius or Primarius China, Defendants began dumping huge numbers

1 of shares of SVA on the market, depressing the price of SVA from just under \$5 on or
2 about May 5, 2006 to \$1.95 on or around July 11, 2006. Defendants' actions in this
3 regard constituted front-running and a breach of the fiduciary duties they owed to
4 Plaintiffs.

5 100. Defendants did this for at least two reasons. First, Defendants anticipated
6 that Primarius China would have to liquidate substantial numbers of shares of SVA to
7 pay Jayhawk China's redemption request, which liquidation Defendants also knew would
8 depress SVA's market price. By front-running Primarius China and breaching their
9 fiduciary duties to that fund, Defendants were able to sell their SVA shares at a higher
10 price than they would have been able to obtain had they waited for Primarius China to
11 sell. Should Primarius China choose to pay Jayhawk China's redemption in securities
12 rather than cash, Jayhawk China would obviously receive more shares of SVA from
13 Primarius China were Defendants first to depress SVA's price by dumping great
14 quantities of their own SVA shares. They could then also buy back the shares they had
15 dumped at bargain prices.

16 101. Second, Defendants knew that depressing SVA's price would make the offer
17 of Defendants and their venture capitalist allies more attractive to Sinovac's
18 management.

19 102. That Defendants were abusing their transparency right in Primarius China
20 to monitor that fund's trading activities so as to be able to front-run Primarius China is
21 evidenced by an email message of May 15, 2006 to Lin from Fleischhauer stating:

22 I notice that you have not started raising any cash in Primarius China Fund.
23 We have given notice on the redemption and Mike Schmitz [of Jayhawk]
24 has sent the notice to Hedgeworks [Primarius' bookkeeper]. You should
25 have enough time to liquidate names in an orderly manner by the end of
June. Also, if we will be receiving securities we will need to know ahead
of time.

26 103. As a direct and proximate result of Defendants' misconduct with respect to
27 SVA, Primarius China suffered a loss of approximately \$1,840,000, Partners suffered a
28 loss of approximately \$96,700, Focus suffered a loss of approximately \$431,000 and

1 Offshore Partners suffered a loss of approximately \$62,000, for a total of approximately
2 \$2,389,700.

3 104. Defendants' misconduct with respect to SVA also greatly harmed all four
4 Primarius funds, as well as Primarius, by negatively affecting their short-term
5 performance, thereby causing investors to lose confidence in, and divest from, the funds,
6 and potential investors not to make investments they would otherwise have made.
7 Primarius China alone was down by 5.50% in May 2006, 5.67% in June 2006 and
8 10.99% in July 2006. Losses caused by Defendants' misconduct with respect to SVA
9 constituted approximately 4% of Primarius China's value. Focus lost approximately
10 1.5% of its value and Partners and Offshore Partners similarly were harmed.

11 105. Plaintiffs are currently unable to provide greater detail concerning
12 Defendants' holdings and trades in SVA because Defendants have failed to make the
13 relevant, required SEC filings since December 2005.

14 **4. Oplink (OPLK) - 10b-5, Fraud, Fiduciary Breach and Front-**
15 **Running**

16 106. Oplink Communications, Inc., ("Oplink") is a US company based in
17 Fremont, California but with most of its operations in China. Oplink manufactures
18 optical equipment and is traded on NASDAQ under the symbol OPLK.

19 107. As detailed below, Defendants, in breach of their fiduciary duties, dumped
20 huge numbers of OPLK shares on the market without informing Plaintiffs, thereby
21 greatly depressing OPLK's trading price and hence the value of Plaintiffs' own OPLK
22 positions. To benefit Defendants, McCarthy then fraudulently misrepresented to
23 Plaintiffs that he did not know why OPLK's price was falling, when he actually knew
24 full well that Defendants were responsible, causing Plaintiffs to retain their OPLK
25 positions, which they would have liquidated had they known the truth. Finally,
26 Defendants committed front-running against Primarius China in connection with a
27 redemption request made to that fund by Jayhawk China.

28 108. During 2005, Primarius China, Partners, Focus and Offshore Partners had

1 substantial positions in OPLK.

2 109. According to public information available at www.sec.gov, or the Edgar or
3 Bloomberg services, Jayhawk China held 732,440 shares of OPLK as of the end of
4 December 2005.

5 110. Throughout 2005, McCarthy, acting as an advisor to Primarius China,
6 Partners and Focus, repeatedly and consistently made favorable statements, orally and
7 in writing, regarding OPLK and encouraged Partners and Focus to retain and increase
8 their OPLK positions.

9 111. In an email message to Lin of June 16, 2005, McCarthy wrote, "have heard
10 oplink may have a couple of big orders."

11 112. McCarthy also "pumped" OPLK in TV appearances on CNBC and the TV
12 show, Jim Cramer's Mad Money.

13 113. After Jayhawk China pushed OPLK's price up to approximately \$12
14 between August and October 2005, OPLK's price per share fell to \$9.59.

15 114. Lin asked McCarthy, Plaintiffs' investment advisor, why OPLK's price was
16 falling. McCarthy responded that he had no idea. This was a blatant misrepresentation.
17 As McCarthy would confess to Lin approximately one week later, and as McCarthy
18 knew full well at the time of Lin's inquiry, OPLK's price was falling because
19 Defendants, which collectively held a substantial proportion of OPLK's outstanding
20 shares, had been dumping large numbers of those shares on the market. Plaintiffs
21 reasonably relied on McCarthy's misrepresentation and held their OPLK positions, to
22 their great detriment. Had McCarthy informed Lin that Defendants intended to dump
23 their OPLK shares or that they were doing so, Plaintiffs would have sold their OPLK as
24 well, knowing that Defendants' trading would depress OPLK's price. The reason for
25 McCarthy's misrepresentation is obvious – had Plaintiffs known the truth and sold their
26 OPLK too, the price Defendants would have been able to obtain for their shares would
27 have been lower. Defendants' dumping of OPLK in this fashion without informing
28 Plaintiffs of their intention, or of the trading itself, constituted both fraud and a breach

1 of Defendants' fiduciary duties to Plaintiffs.

2 115. Defendants also committed front-running against Primarius China and
3 breached their fiduciary duties to that fund with respect to certain OPLK trades in
4 connection with certain redemption requests. On May 15, 2006, as described in greater
5 detail below, Jayhawk China requested withdrawal of approximately \$19 million of the
6 approximately \$29 million it had invested in Primarius China.

7 116. Defendants knew that, to pay this redemption, Primarius China would either
8 have to raise cash by liquidating a substantial proportion of its portfolio, including at
9 least a substantial proportion of its position in OPLK, or transfer to Jayhawk China large
10 numbers of shares of securities held by Primarius China including shares of OPLK, at
11 depressed prices. Defendants knew the extent of Primarius China's OPLK holdings
12 because of the transparency right they had with respect to that fund.

13 117. At or around the time of making the redemption request, and without
14 informing Lin, Primarius or Primarius China, Defendants began dumping huge numbers
15 of shares of OPLK on the market, depressing the price of OPLK from approximately \$20
16 on or around May 1, 2006 to \$15.58 on or around May 22, 2006. Defendants actions in
17 this regard constituted front-running and a breach of the fiduciary duties they owed to
18 Plaintiffs.

19 118. Defendants' reasons for doing this are obvious. Defendants anticipated that
20 Primarius China would have to liquidate substantial numbers of shares of OPLK to pay
21 Jayhawk China's redemption request, which liquidation Defendants also knew would
22 depress OPLK's market price. By front-running Primarius China and breaching their
23 fiduciary duties to that fund, Defendants were able to sell their OPLK shares at a higher
24 price than they would have been able to obtain had they waited for Primarius China to
25 sell. Should Primarius China choose to pay Jayhawk China's redemption in securities
26 rather than cash, Jayhawk China would obviously receive more shares of OPLK from
27 Primarius China were Defendants first to depress OPLK's price by dumping great
28 quantities of their own OPLK shares. They could then also buy back the shares they had

1 dumped at bargain prices.

2 119. That Defendants were abusing their transparency right in Primarius China
3 to monitor that fund's trading activities so as to be able to front-run Primarius China is
4 evidenced by an email message of May 15, 2006 to Lin from Fleischhauer stating:

5 I notice that you have not started raising any cash in Primarius China Fund.
6 We have given notice on the redemption and Mike Schmitz [of Jayhawk]
7 has sent the notice to Hedgeworks [Primarius' bookkeeper]. You should
8 have enough time to liquidate names in an orderly manner by the end of
of time.

9 120. Defendants' misconduct with respect to OPLK directly and proximately
10 caused Primarius China a loss of approximately \$1,387,000, Partners a loss of
11 approximately \$284,000, Focus a loss of approximately \$796,000, and Offshore Partners
12 a loss of approximately \$170,000, for a total of approximately \$2,137,000.

13 121. Defendants' misconduct with respect to OPLK also greatly harmed all four
14 Primarius funds by negatively affecting their short-term performance, thereby causing
15 investors to lose confidence in, and divest from, the funds, and potential investors not
16 to make investments they would otherwise have made. Primarius China alone was down
17 by 5.50% in May 2006, 5.67% in June 2006 and 10.99% in July 2006. Losses caused
18 to Primarius China as a result of Defendants' misconduct in connection with OPLK,
19 LTON and SVA constituted more than 10% of the value of Primarius China, or more
20 than \$3.5 million *lost* within a 6-month period.

21 122. Plaintiffs are currently unable to provide greater detail concerning
22 Defendants' holdings and trades in OPLK because Defendants have failed to make the
23 relevant, required SEC filings since December 2005.

24 **Jayhawk China's Redemption Request from Primarius China**

25 123. Jayhawk China is a limited partner of Primarius China and the owner of a
26 capital account with assets that were valued as of June 30, 2006 at approximately \$29
27 million.

28 124. The aggregate value of assets held by Primarius China as of June 30, 2006

1 was approximately \$35 million.

2 125. The capital account of Jayhawk China, therefore, constituted more than 80%
3 of the aggregate value of Primarius China.

4 126. Primarius China is governed, and the rights and duties of its general and
5 limited partners determined, by the Primarius China Fund LP Limited Partnership
6 Agreement (the "Primarius China Agreement") and the Primarius China Fund
7 Confidential Private Placement Memorandum (the "Primarius China PPM"), true and
8 correct copies of which are appended to this Complaint as Exhibits C and D respectively
9 and are incorporated fully herein by this reference.

10 127. Article VI, paragraph 6.1(a) of the Primarius China Agreement (Exhibit C
11 at pp. 12-13) provides in pertinent part:

12 [N]o Limited Partner or Assignee shall be entitled to withdraw any amount
13 from, or receive the fair value of any portion of, any Capital Account of
14 such Limited Partner or Assignee, except to the extent (i) such right is
15 described in the Memorandum in effect at the time such Capital Account
16 was established pursuant to this Agreement, or the General Partner, in its
17 sole and absolute discretion, has agreed to a Substitute Withdrawal
Arrangement with such Limited Partner or Assignee with respect to such
Capital Account; (ii) the General Partner, in its sole and absolute discretion,
permits such withdrawal; or (iii) such Limited Partner is entitled to receive
distributions in connection with the winding up of the Partnership as
provided in Article XI.

18 128. The "Memorandum" referred to in Article VI, paragraph 6.1(a) of the
19 Primarius China Agreement is the Primarius China PPM.

20 129. Article VI, paragraph 6.1(e) of the Primarius China Agreement (Exhibit C
21 at pp. 13-14) provides in pertinent part:

22 Notwithstanding any other provision of this Agreement, the General Partner
23 may suspend withdrawals and/or payments due to Limited Partners and
24 Assignees in connection with withdrawals for the whole or any part of any
period during which:

25 (I) the General Partner determines that: (A) effecting such withdrawals or
26 making such payments would . . . have a material adverse effect on the
27 Limited Partners generally; . . . or (C) circumstances exist as a result of
28 which it is not reasonably practicable for the Partnership to realize on the
value of a material portion of its assets . . .

130. Section 6 of the Primarius China PPM (Exhibit D at pp. 22, 23 and 24) provides in pertinent part:

Subject to a one-year “lock-up” commencing on the date a capital contribution is credited to a Limited Partner’s Capital Account, a Limited Partner may withdraw all or any part of the balance of such Capital Account as of the last day of any calendar quarter, upon not less than 45 days prior written notice to the General Partner.

* * *

The General Partner may agree to a different withdrawal arrangement in respect of any Capital Account of a Limited Partner in its discretion. This will not entitle the Limited Partner that holds such Account, or any other Limited Partner, to such a different arrangement in respect of any other Capital Account. The General Partner also has the discretion to grant a Limited Partner the right to withdraw amounts from a Capital Account at a time that differs from, or upon a notice period shorter than, the time and notice period described above. This will not entitle the Limited Partner that holds such an Account, or any other Limited Partner, to such a right in respect of any other Capital Account.

* * *

While the Fund expects to distribute cash to Limited Partners in respect of their withdrawals, there can be no assurance that the Fund will have sufficient cash to satisfy withdrawal requests, or that it will be able to liquidate investments at the time of such withdrawal requests at favorable prices. Under the foregoing circumstances or the circumstances described below under “Suspension of Withdrawals and Withdrawal Payments,” the Fund may make “in kind” distributions of its portfolio securities, or distributions consisting of a combination of cash and portfolio securities, to satisfy withdrawal requests. To the extent the Fund makes “in kind” distributions, it will allocate such distributions among the holders of the Capital Accounts entitled thereto such that each such holder shall, except for immaterial variances, receive a *pro rata* portion thereof. Securities distributed “in kind” may not be readily marketable or saleable and may have to be held by the Limited Partners who receive them for an indefinite period of time.

* * *

The General Partner may suspend withdrawals and/or payments due to Limited Partners in connection with withdrawals for the whole or any part of any period during which the General Partner reasonably determines that: (A) effecting such withdrawals, or making such payments would . . . have a material adverse effect on the Limited Partners generally; . . . or (C) circumstances exist as a result of which it is not reasonably practicable for the Fund to realize on the value of a material portion of its assets. The General Partner may also suspend withdrawals and/or payments due to Limited Partners in connection with withdrawals in order for the Fund to effect the orderly liquidation of its assets necessary to effect withdrawals.

131. The Primarius China Agreement at p. A-6 defines “Notification” in pertinent part as follows:

Notification” to a Person - a written notice that is deemed to be duly given to such Person on the date of delivery if delivered in person to such Person or sent to such Person by confirmed facsimile transmission or reputable overnight courier, or on the earlier of actual receipt or three (3) Business Days after the date of mailing if mailed to such Person by registered or certified mail (first class postage prepaid, return receipt requested); *provided however*, that: (I) a Notification to the Partnership shall be deemed to be duly given to the Partnership only upon its actual receipt by the Partnership . . . Any Notification required or permitted to be given to a Partner shall be sent to such Partner at such address or to such facsimile number as such Partner may notify the Partnership by way of a Notification . . . [Emphasis in original.]

132. The Primarius China Agreement at p. A-6 defines “Person” as “any natural person, whether acting in an individual or representative capacity, or any Entity.

133. The Primarius China Agreement at p. A-3 defines “Entity” as follows:

any domestic or foreign corporation, partnership (whether general or limited), joint venture, limited liability company, business trust or association, trust, estate, unincorporated association or organization, custodian, government (or political subdivision, department or agency thereof), cooperative or other entity, whether acting in an individual or representative capacity.

134. The Primarius China Agreement at p. A-6 defines “Partner” as “the General Partner, each Additional General Partner and each Limited Partner.”

135. On May 15, 2006, Michael D. Schmitz (“Schmitz”), Jayhawk’s CFO wrote to Stephen Douglas of HedgeWorks, LLC (“HedgeWorks”), Primarius’ administrator and bookkeeper, stating that Jayhawk China “would like to make a redemption of its interests in the [China] Fund that are in excess of \$10,000,000 USD as of June 30, 2006 . . .”

136. In an e-mail message of July 5, 2006 to Patrick Lin (“Lin”), managing member and portfolio manager of Primarius, Mark Fleischhauer of Jayhawk stated, “WE ARE NOW MAKING A FULL REDEMPTION REQUEST WITH RESPECT TO OUR INVESTMENT IN PRIMARIUS CHINA FUND.” [Emphasis in original.]

137. In a letter of July 11, 2006 to Lin, Schmitz wrote:

This is notification that [Jayhawk China] would like to make a full

1 redemption of its capital interests in the [China] Fund as of September 30,
2 2006. This is in addition to the June 30, 2006 redemption request and does
3 not change the terms of that request, but is designed to request a withdrawal
of whatever Jayhawk capital interests remain in the [China] Fund as of
September 30, 2006.

4 138. Shortly after receiving Jayhawk China's redemption requests, Primarius
5 determined that, due to prevailing market conditions and the size of the requested
6 withdrawals relative to the aggregate value of Primarius China's assets, pursuant to
7 Article VI, paragraph 6.1(a) of the Primarius China Agreement and Section 6 of the
8 Primarius China PPM, effecting the withdrawals and making the payments Jayhawk
9 China sought would have a material adverse effect on Primarius China and its limited
10 partners generally and that circumstances existed as a result of which it was not
11 reasonably practicable for Primarius China to realize on the value of a material portion
12 of its assets in connection with Jayhawk China's requested withdrawals.

13 139. Primarius crafted a schedule of payments of Jayhawk China's requested
14 withdrawals pursuant to which Jayhawk China would have received \$4 million in cash
15 and/or securities immediately, \$1 million in cash and/or securities as of July 31, 2006,
16 \$1 million in cash and/or securities as of August 31, 2006, and the balance of Jayhawk
17 China's capital account in Primarius China as of the earlier of December 31, 2006
18 (subject to standard processing procedures, with actual payment estimated to occur in
19 mid-January 2007); or (2) as soon as possible after such date as Primarius, using
20 reasonable diligence, secured investment to replace Jayhawk China's position in
21 Primarius China.

22 140. Jayhawk China rejected this schedule, demanded payment of the entire
23 balance of Jayhawk China's capital account and repeatedly threatened Primarius and
24 Primarius China with litigation if its demands are not met.

25 141. On or about October 18, 2006, Primarius transferred to Jayhawk China
26 \$5,710,296 in cash towards its requested redemption in Primarius China.

27 142. On or about November 15, 2006, Primarius transferred to Jayhawk China
28 an additional \$4,827,332 in cash towards its requested redemption in Primarius China.

1 143. On or about December 29, 2006, Primarius transferred to Jayhawk China
2 an additional approximately \$3.3 million towards its requested redemption in Primarius
3 China.

4 144. After analyzing the damage caused to Primarius China, Partners and Focus
5 by certain unfair, unlawful activities of Defendants detailed herein, including without
6 limitation front-running, provision of fraudulent investment advice and other material
7 misrepresentations and numerous breaches of fiduciary duties, Primarius decided to
8 make no further payments to Jayhawk China towards its requested redemption in
9 Primarius China and to hold the amount of Jayhawk China's remaining interest in
10 Primarius China in escrow pending the outcome of this action and to request that the
11 Court hold such funds a proper offset against damages owed to Plaintiffs resulting from
12 the misconduct described herein.

13
14 **FIRST CAUSE OF ACTION**

15 **Section 10(b) of the Exchange Act and Rule 10b-5**

16 (Against All Defendants)

17 145. Plaintiffs reallege and incorporate by reference each and every allegation
18 in paragraphs 1 through 144 above, as if fully set forth herein.

19 146. Defendants, and each of them, by engaging in the conduct described above,
20 directly or indirectly, in connection with the purchase or sale of a security, and by use
21 of a means or instrumentality of interstate commerce, the mails or a facility of a national
22 securities exchange, have

23 (a) employed a device, scheme or artifice to defraud;

24 (b) made untrue statements of material facts or omitted to state material facts
25 necessary in order to make the statements made, in light of the circumstances under
26 which they were made, not misleading; and/or

27 (c) engaged in acts, practices and/or courses of business which operated or
28 would operate as a fraud or deceit upon any person.

1 147. As a direct and proximate result, Plaintiffs, and each of them, have suffered
2 damages in an amount to be determined at trial.

3 **SECOND CAUSE OF ACTION**

4 **Sections 9(a) and (e) of the Exchange Act**

5 (Against All Defendants)

6 148. Plaintiffs reallege and incorporate by reference each and every allegation
7 in paragraphs 1 through 147 above, as if fully set forth herein.

8 149. Defendants, and each of them, by engaging in the conduct described above,
9 directly or indirectly, in connection with the purchase or sale of a security, and by use
10 of a means or instrumentality of interstate commerce, the mails or a facility of a national
11 securities exchange, have knowingly, willfully and intentionally effected, alone or with
12 one or more other persons, a series of transactions in securities registered on a national
13 securities exchange creating actual or apparent active trading in such security, and/or
14 raising or depressing the price of such securities, for the purpose of inducing the
15 purchase and/or sale of such securities by others.

16 150. As a direct and proximate result, Plaintiffs, and each of them, have suffered
17 damages in an amount to be determined at trial.

18 **THIRD CAUSE OF ACTION**

19 **Section 206 of the Investment Advisers Act**

20 (Against McCarthy)

21 151. Plaintiffs reallege and incorporate by reference each and every allegation
22 in paragraphs 1 through 150 above, as if fully set forth herein.

23 152. McCarthy was, at all relevant times, an "investment adviser" within the
24 meaning of section 202(11) of the Investment Advisers Act, 15 U.S.C. § 80b-6(11), in
25 that he, for compensation, engaged in the business of advising others, either directly or
26 through publications or writings, as to the value of securities and/or as to the advisability
27 of investing in, purchasing, or selling securities.

28 153. In his capacity as an investment adviser, McCarthy:

- 1 (a) employed devices, schemes and artifices to defraud Plaintiffs;
2 (b) engaged in transactions, practices and courses of business which operated
3 as a fraud and/or deceit on Plaintiffs; and
4 (c) engaged in acts, practices and/or courses of business which were fraudulent,
5 deceptive and/or manipulative.

6 154. Because of McCarthy's acts described above, Plaintiffs are entitled to: (1)
7 rescission of all agreements between them or any one of them on the one hand and
8 McCarthy on the other for the provision of investment advice; and (2) restitution of all
9 moneys paid to McCarthy and/or any other Defendant as consideration for all such
10 agreements.

11 **FOURTH CAUSE OF ACTION**

12 **Fraud**

13 (Against All Defendants)

14 155. Plaintiffs reallege and incorporate by reference each and every allegation
15 in paragraphs 1 through 154 above, as if fully set forth herein.

16 156. As described herein, Defendants made numerous material
17 misrepresentations with knowledge of their falsity, and/or numerous knowing,
18 intentional omissions of fact to Plaintiffs with the intention of inducing Plaintiffs to rely
19 upon such misrepresentations and/or omissions, Plaintiffs reasonably relied upon these
20 misrepresentations and, as a direct and proximate result, suffered great damage.

21 **FIFTH CAUSE OF ACTION**

22 **Breach of Fiduciary Duty**

23 (Against All Defendants)

24 157. Plaintiffs reallege and incorporate by reference each and every allegation
25 in paragraphs 1 through 156 above, as if fully set forth herein.

26 158. As explained herein, Defendants owed Plaintiffs certain fiduciary duties as
27 limited partners and/or members of, or as investment advisor to, Plaintiffs.

28 159. Defendants repeatedly breached these duties, directly and proximately

1 causing Plaintiffs to suffer great damage.

2 **SIXTH CAUSE OF ACTION**

3 **Breach of Contract**

4 (Against McCarthy)

5 160. Plaintiffs reallege and incorporate by reference each and every allegation
6 in paragraphs 1 through 159 above, as if fully set forth herein.

7 161. McCarthy promised and was contractually bound to provide each of
8 Plaintiffs Primarius, Primarius China, Focus and Partners with professional, competent
9 good faith investment advice.

10 162. Primarius, Primarius China, Focus and Partners each provided good and
11 adequate consideration in exchange for McCarthy's promises and contractual
12 obligations.

13 163. Primarius, Primarius China, Focus and Partners each have at all times
14 complied with each and every contractual obligation owed to McCarthy and are not in
15 breach of any such obligation. To the extent Primarius, Primarius China, Focus or
16 Partners might not have performed, such performance was excused by McCarthy's
17 breaches.

18 164. McCarthy breached his contractual obligations to provide professional,
19 competent, good faith investment advice to each of Primarius, Primarius China, Focus
20 and Partners numerous times, as detailed in this Complaint.

21 165. As a direct and proximate result of McCarthy's breaches, each of Primarius,
22 Primarius China, Focus and Partners have suffered great damage.

23 **SEVENTH CAUSE OF ACTION**

24 **Declaratory Relief**

25 (Against Jayhawk China)

26 166. Plaintiffs reallege and incorporate by reference each and every allegation
27 in paragraphs 1 through 165 above, as if fully set forth herein.

28 167. An actual controversy has arisen and now exists between Primarius China

1 and Jayhawk China concerning their respective rights and duties with respect to Jayhawk
2 China's requested withdrawals from Primarius China. Specifically, Primarius China
3 contends that it has the right to suspend all payment of Jayhawk China's requested
4 withdrawals and hold any outstanding amounts that might otherwise be due on those
5 withdrawals in escrow pending the outcome of this action, and to apply such outstanding
6 amounts against any award made to Primarius China. Plaintiffs are informed and
7 believe, and on that basis allege, that Jayhawk China contends that it is entitled to a full,
8 immediate redemption of the balance of Jayhawk China's capital accounts in Primarius
9 China.

10 168. Primarius China desires a judicial determination of its rights and duties with
11 respect to payment of the remainder of Jayhawk China's requested withdrawals,
12 including without limitation its right to suspend all payment of Jayhawk China's
13 requested withdrawals and hold any outstanding amounts that might otherwise be due
14 on those withdrawals in escrow pending the outcome of this action, and to apply such
15 outstanding amounts against any award made to Primarius China.

16 169. A judicial declaration is necessary and appropriate at this time pursuant to
17 the facts and averments stated in this Complaint in that Primarius China's ability to
18 manage the winding up of that fund are significantly affected by the determination of
19 the issue described above.

20 170. Wherefore, Primarius China requests a court decree herein providing that
21 it has the right to suspend all payment of Jayhawk China's requested withdrawals and
22 hold any outstanding amounts that might otherwise be due on those withdrawals in
23 escrow pending the outcome of this action, and to apply such outstanding amounts
24 against any award made to Primarius China.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs pray for judgment as follows:

27 A. On the First through Sixth Causes of Action, an award of compensatory
28 damages, together with pre-judgment interest at the maximum rate allowable by law;

1 B. On the Seventh Cause of Action, a court decree providing that Primarius
2 China has the right to suspend all payment of Jayhawk China's requested withdrawals
3 and hold any outstanding amounts that might otherwise be due on those withdrawals in
4 escrow pending the outcome of this action, and to apply such outstanding amounts
5 against any award made to Primarius China;

6 C. On the Fourth and Fifth Causes of Action, an award of punitive damages;

7 D. On all causes of action, an award of Plaintiffs' cost and expenses for this
8 litigation, including reasonable attorney's fees, expert fees and other disbursements; and

9 E. Such other and further relief as the Court might deem appropriate.
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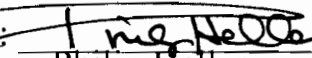
DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, Plaintiffs hereby demand a trial by jury with respect to all issues so triable.

Dated: March 29 2007

Respectfully submitted,

FAGELBAUM & HELLER LLP

By: 
Philip Heller
Attorneys for Plaintiffs